IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2325 OF 2006

1. M/s.Rich Kwality Products Pvt.Ltd.
   Head Office: "C" Building, 1st floor,
   Paragon Condominium,
   Paragon Textile Mills Compound,
   P.B.Marg, Mumbai-400 013.

2. Shri Nisar Premji,
   Director-Technical,
   Rich Kwality Products Pvt.Ltd.,
   Head Office: "C" Building,
   1st Floor, Paragon Condominium,
   Paragon Textile Mills Compound,
   P.B.Marg, Mumbai-400 013. .. Petitioners

v/s.

1. Union of India
   Through Joint Secretary,
   Ministry of Law & Justice,
   Branch Secretariat,
   Aayakar Bhavan Annexe,
   M.K.Road, Mumbai-400 020.

2. The Commissioner of Customs,
   Jawahar Custom House.
   Port Users Building,
   Nhava Sheva, Dist.Raigad.

3. Assistant Commissioner of Customs,
   Jawahar Custom House,
   Port Users Building, Nhava Sheva,
   Dist.Raigad.

4. Port Health Officer
   Port Health Organisation,
   J.N.Port, Nhava Sheva,
   Dist.Raigad.

5. The Director, .. Respondents
   Central Food Laboratory,
   Stavely Road, Pune Cantt.,,
   Pune.

Mr.R.V.Desai, Senior Counsel with Mr.H.V.Mehta for the petitioners.

Mr.Rajiv Chavan with Ms.N.V.Masurkar i/by Dr.T.C.Kaushik for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 12TH APRIL, 2006.

ORAL ORDER (Per R.M.Lodha, J.)

Rule. Returnable forthwith.

2. The advocate on record for the respondents waives service.

3. We heard Mr.R.V.Desai, senior counsel for the petitioners and Mr.Rajiv Chavan, counsel for the revenue for final disposal of the writ petition.

4. The first petitioner- M/s.Rich Kwality Products Pvt.Ltd. is a private limited company. They carry on business in manufacturing non dairy whip topping. The first petitioner claims to be the ISO

9001-2000 and HACCP certified organisation. For manufacturing non dairy whip topping, the first petitioner imported refined hardened hydrogenated palm kernel oil from Malaysia as actual users. They filed three bills of entry being Bill of Entry Nos.660741 dated 2.1.2006, 661880 dated 3.1.2006 and 675956 dated 19.1.2006 for home consumption. All the three bill of entries were provisionally assessed by the Assistant Commissioner of Customs. The first petitioner is said to have paid the customs duty of the three consignments. However, the consignments were not released as the same were found not conforming to the standards of Vanaspati as per the Prevention of Food Adulteration Rules, 1955.

5. By means of this writ petition, the petitioners have prayed for issuance of writ of mandamus directing the respondent Nos.1 to 3 to clear the goods which is the subject matter of the writ petition.

6. In response to the writ petition, the reply affidavit has been filed by the Assistant Commissioner of Customs (Group-I). The stand of the Customs Department is that the three import consignments of the first petitioner were subjected to the regular assessment and being a food product, it was endorsed to the examining staff in the docks with instructions to obtain no objection of the Port Health Officer before release of the goods.

The Port Health Officer withdrew samples from the three consignments and forwarded the same to the Central Food Laboratory for analysis. The three reports in respect of the these consignments were received from the Central Food Laboratory. In the report, the Central Food Laboratory observed that the samples do not conform to the standard of refined hardened hydrogenated palm kernel oil as per the Prevention of Food Adulteration Rules, 1955. Upon receipt of the reports, the Customs Authority sought clarification from the Port Health Officer as to whether the consignment was adulterated or not and whether these were fit for human consumption or otherwise. No adverse report was sent by the Port Health Officer on these aspects. In this backdrop, it is submitted that the goods cannot be permitted to be cleared in the light of the export-import policy and circulars issued by the Board.

7. The counsel for the revenue could not show us any material which indicate that the subject goods are adulterated or not fit for human consumption. His submission is that the subject consignment being Vanaspati does not conform to the standards of Vanaspati as per the Prevention of Food Adulteration Rules, 1955. He would submit that the subject goods failed in Baudouin test though it conformed to all other standards. He relied upon clause 10 of A.19 of the Prevention of Food Adulteration Rules, 1955.

8. The short question that arises for our consideration is: By

not conforming to the Baudouin test under clause (x) of A.19 of Prevention of Food Adulteration Rules, 1955, whether it is correct to say that the subject goods do not conform to the standards of Vanaspati as per the said Rules, 1955.

9. Vanaspati under para A.19 of the Prevention of Food Adulteration Rules, 1955 means any refined edible vegetable oil or oils, subjected to a process of hydrogenation in any form. It is prepared by hydrogenation from groundnut oil, cotton seed oil and sesame oil or mixtures thereof or any other harmless vegetable oils allowed by the Government for the purpose. Para A.17.21 of the said Rules, deals with palm kernel oil which means the oil obtained from sound palm kernel or the fruits of oil palm tree by the method of expression or solvent extraction. The import consignments are refined hardened hydrogenated palm kernel oil. That it is Vanaspati under para A.19 is beyond cavil.

10. Para A.19 of the Prevention of Food Adulteration Rules, 1955 prescribes the standards of Vanaspati which read thus-

(i) It shall not contain any harmful colouring, flavoring or any other matter deleterious to health;

(ii) No colour shall be added to hydrogenated vegetable oil unless so authorised by Government, but in no event any colour resembling the colour of ghee shall be added;

(iii) If any flavour is used, it shall be distinct from that of ghee, in accordance with a list of permissible flavours and in such quantities as may be prescribed by Government:

[Provided that diacety] to the extent of not more than 4.0 p.p.m. May be added to Vanaspati exclusively meant for consumption by the Armed Forces];

(iv) It shall not have moisture exceeding 0.25 per cent;

(v) The melting point as determined by capillary slip method shall be from [31 C] to [41 C] both inclusive;

[***]

(vii) It shall not have unsponifiable matter exceeding [2.0] per cent; [but in case of vanaspati where proportion of rice bran oils is more than 30 per cent. By weight, the unsponifiable matter shall be not more than 2.5 per cent. By weight provided quantity of rice bran oil is declared on the level of such vanaspati as laid down in clause (zzz)(4) of rule 42];

(viii) It shall not have free fatty acids (calculated as Oleic acid) exceeding 0.25 per cent;

(ix) The product on melting shall be clear in appearance and shall be free from staleness or rancidity, and pleasant to taste and smell;

(x) [It shall contain raw or refined sesame (til) oil in sufficient quantity] so that when the vanaspati is mixed with refined groundnut oil in the proportion of 20:80, the colour produced by the Baudouin test shall not be lighter than 2.0 red unit in a 1cm. Cell on a Lovibond scale;

(xi) It shall contain not less than 25.I.U. Of synthetic vitamin `A' per gram at the time of packing [and shall show a positive test for Vitamin `A' when tested by Antimony Trichloride (Carr-Price) reagent (as per ISI 5886-1970)].

[(xii) No anti-oxidant, synergist-emulsifier or any other such substance shall be added to it except with the prior sanction of the Government.]]

[(xiii) It shall not have nickel exceeding 1.5 ppm.

[Test for argemone oil shall be negative.]

11. That the import consignments meet all the standards specified in A.19 as aforenoticed, save and except Baudouin test, is not in dispute. Clause (x) as aforenoticed provides that the Vanaspati must contain the raw or refined sesame oil in sufficient quantity and to find out Baudouin test is provided. There is nothing to show that the import consignments are adulterated or not fit for human consumption. The respondent No.5 in his

affidavit has admitted that the samples meet the prescribed standards of Vanaspati for moisture, melting point, unsaponifiable matter, free fatty acids, Vitamin A and rancidity. He has also stated in his affidavit that the specific tests for Adulterants viz. synthetic colour, Argemone oil and animal fat were found negative. In these peculiar facts, we are of the view that the import consignments may be cleared.

12. In what we have said above, the Customs Authority shall complete the adjudication proceedings and clear the import consignments within two weeks from today.

Rule is made absolute accordingly. No costs.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)